

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

August 12, 2003

Chairman S. Schiller called the meeting to order at 4:04 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, S. Schiller, R. Hilt, E. Fordham, R. Schweifler, J. Clingman-Scott

MEMBERS ABSENT: D. Newsome

STAFF PRESENT: D. Steenhagen, H. Griffith

OTHERS PRESENT: N. Cunningham, C & A Commercial Real Estate; M. Litynski, 2572 McCracken; S. Holdeman, 2011 Letart; S. Johnson, Every Woman's Place; Norris Mead, 3682 Fairway; P. Karadeen, 1397 E Isabella; M. Kotecki, 1190 W Dale; J. Etterman, 1172 W. Dale.

APPROVAL OF MINUTES

A motion that the regular meeting minutes of July 8, 2003 be approved, was made by R. Schweifler, supported by R. Hilt and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2003-19: Use Variance request to allow a pawn shop at 1996 W. Sherman Blvd. to operate in a B-1, Limited Business, zoning district, by Shermac, Inc. D. Steenhagen presented the staff report. This case is the result of an enforcement action. Staff became aware of a pawnshop operating on this site through a phone call complaint. The subject property and the property directly adjacent to the north (a dentist office) are both zoned B-1. The property across McCracken St. (Lakeshore Carpet One) was rezoned from B-1 to B-2 in 1992. The other current tenant in the building on the subject property is Rit Music. Other suites in the building are currently vacant. The signs on the building advertise the business as a pawnshop. Photos were supplied to the commission members. A pawnshop is defined in the Miriam-Webster Dictionary as, "The shop of a pawnbroker". A pawnbroker is defined as, "One who makes a business of lending money on the security of personal property pledged or deposited in his keeping". The Zoning Ordinance restricts retail uses in the B-1 district to those, which supply **new** commodities to those residing in adjacent residential areas. A pawnshop sells mainly used goods (those which have been left as security for loans which end up not being repaid). Even if a pawnshop does also sell some new items as well, the primary function is to sell previously owned (pawned) goods. The Zoning Ordinance does permit secondhand stores in the B-2 district, as a Special Use, under certain conditions. Secondhand stores are also permitted as principal uses in the B-4, General Business, zoning district. When making a determination as to whether a store falls

under the regulations for secondhand stores, staff looks at the primary use or function of the store. Many retail stores do sell used or secondhand items on consignment (i.e., a camera shop, which sells used equipment along with new), but if that use is considered to be secondary to the primary use, then the store is not considered to be a secondhand store. In the case of the subject business, the primary function or use of the store is to sell secondhand (pawned) items, so therefore the selling of any new items as well would be considered secondary and the store is considered to be a secondhand store for zoning purposes. The applicant is applying for both a use variance and a rezoning to B-2 for this property. If the rezoning is approved by the City Commission then the applicant could apply for a Special Use Permit for a secondhand store on the property. Staff has received 3 phone calls regarding this case. The first was from Sally Pleimling who was opposed to the request. The second from Evelyn Nelson who was also opposed to the request. The last being from Sherry of West Shore Dentistry stating they have had problems with the customers of the pawnshop. The customers play loud music, loiter, and litter. The litter blows to neighboring properties. She doesn't feel safe. D. Steenhagen also stated that she looked into any police reports that were made regarding this business. Detective Workman informed her that there had been 1 alarm call in 2002 and one in 2003. There have been some verbal complaints, but nothing formal.

R. Schweifler asked for clarification regarding the applicant applying for both the variance and the rezoning. D. Steenhagen stated that the applicant apparently wanted to cover all their bases. R. Hilt asked if the variance were approved, would it go for all the suites on the property. D. Steenhagen stated that it would be for this suite only since it is addressing the pawnshop. E. Fordham asked why the property across the street had been rezoned. D. Steenhagen stated that she wasn't sure. She explained what she had found in the file for that property. C. Kufta asked if the pawnshop would still be allowed if the Planning Commission decided to rezone the property to B-2. D. Steenhagen stated that it would under a special use permit. R. Schweifler felt that the rezoning should be looked at before going to the ZBA. The ZBA is an appeals process and should be used as such. He would prefer to table this request until the Planning Commission decides on the rezoning. N. Cunningham stated that staff had suggested applying for both. He also thought that the rezoning request should have been heard first, but the meetings don't fall in an order for this to be done. He stated that it is difficult to find compatible tenants in a building such as this. He described the different businesses in the area and which commercial buildings were vacant. M. Litynski stated that she had applied to have her property rezoned in this area to B-2 and she was denied.

A motion to close the public hearing was made by R. Schweifler, supported by R. Hilt and unanimously approved.

R. Schweifler still thinks it should be addressed with the Planning Commission first. Should the rezoning not be granted, then the ZBA should hear this as an appeal. J. Clingman-Scott felt that it didn't make much of a difference. They are appealing based on the current zoning. If the rezoning were approved, they would still need to apply for a special use permit. R. Schweifler asked if the applicant would still be going through with the rezoning request if the variance were granted. S. Holdeman stated that they would. A B-2 zoning would give them more flexibility. C. Kufta felt that they should proceed with this request. R. Schweifler stated that he would still prefer to wait and see what the Planning Commission decides.

A motion that the use variance to permit a pawn shop to operate at 1996 W. Sherman Blvd., be tabled, was made by R. Schweifler, supported by E. Fordham and failed with C. Kufta, S. Schiller, R. Hilt, and J. Clingman-Scott voting nay.

R. Hilt had concerns for the neighboring property owners. He felt that some of the complaints should be addressed as well. R. Schweifler stated that the rezoning would create a greater pool of businesses than would be allowed if the property were rezoned. He would support the pursuit of the rezoning. J. Clingman-Scott stated that they needed to look at the property under the B-1 zoning and not the B-2. The vacant buildings in the area are not the issue. The types of customers also aren't an issue. She could see how the zoning ordinance could be. C. Kufta felt that all of the findings of fact haven't been met in order to approve the request.

The following are the findings of fact: The property could be used (put to a reasonable use) for the purposes permitted in that zone district because the property could be rented under the current zoning. The plight is not due to unique circumstances peculiar to the property and is to general neighborhood conditions because this use could create a problem for neighboring residential homes. The proposed use would alter the essential character of the area and will materially impair the purposes of this ordinance or the public interest because the neighboring residential homes may be affected by this use. The alleged hardship could be caused by the Ordinance and could have been created by any person presently having an interest in the property, or by any previous owner because it's hard to tell, but the current B-1 zoning limits the uses allowed in the building. The alleged hardship is founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because this use isn't allowed under the current zoning for the property. The requested variance is not the minimum action required to eliminate the hardship because the property could be rezoned in order to allow for this use. The use variance does permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested because used and consignment merchandise are not permitted under the B-1. The extent to which the ordinance protect users or neighbors from threats to health, safety and welfare shall be considered. A use that seriously threatens the health of future residents or neighbors is not a beneficial or allowable use. The proposed use is considered to be a threat to health, safety or welfare of future residents or neighbors because there have been complaints regarding litter, loitering, loud music by the public (not in a police report). In no case shall a use that is a nuisance per se, or a use, which in that particular location constitutes a nuisance, be granted as a use variance. Such uses are not legal uses of the land. The proposed use is considered a nuisance because concerns were raised by neighboring property owners.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the use variance to permit a pawn shop to operate at 1996 W. Sherman Blvd., be denied, based on the findings of fact, was made by R. Hilt, supported by C. Kufta and approved with R. Schweifler voting nay.

Hearing: Case 2003-20: Variance request to allow an accessory structure with metal siding in a residential zoning district, at 1221 W. Laketon Ave., by Every Woman's Place. D. Steenhagen presented the staff report. The property is located on W. Laketon Ave. in front of Catholic

Central High School. The school and the subject property are both zoned R-1. Every Woman's Place is a nonconforming use in the R-1 zoning district. The applicant would like to place a storage building on their property as part of this year's United Way Day of Caring. The storage building has been described as a pole-style building with metal siding. The zoning ordinance prohibits metal accessory structures in all residential districts, because of aesthetics, and the fact that pole buildings are more agricultural and commercial in nature than residential. Pole buildings are permitted in commercial or industrial zoning districts. There is a good deal of screening at the proposed site, but it is difficult to tell exactly where the building will be placed in relation to the existing screening. If the variance is approved, the building should be screened from public view along Laketon Ave. if the existing landscaping is insufficient screening. Staff has received one phone call regarding this case, from Maxine Van Bemmelen, 1774 McGraft. She is not in favor of any commercial thing going up there. The neighbors all have to protect their property values.

E. Fordham asked if the structure would be located where the dumpster currently is because if it were, it would hardly be seen. S. Johnson stated that the building would be located where the dumpster is. The dumpster would be moved behind the main building, near the kitchen. The building was donated to them. C. Kufta asked if it was a kit. S. Johnson stated that they don't actually have it yet. The vendor had agreed to donate the materials for the structure if the variance is approved. C. Kufta asked if there was a drawing showing what it would look like. N. Mead supplied a drawing for the commission members to see. C. Kufta asked if the metal would have a factory finish. N. Mead stated that it would. J. Clingman-Scott asked if there was a possibility to have vinyl siding instead. N. Mead stated that they don't have the money to upgrade this to siding. The metal would be factory painted. A contractor would be building it. E. Fordham stated that this type of metal would last longer than siding. R. Hilt asked if it would rust quickly. E. Fordham stated that this wouldn't since it is pre-finished at the factory. C. Kufta asked if the building could be made smaller and upgrade the quality. S. Johnson stated that they receive a lot of donations. The donations consist of vehicles, appliances, etc. They need the larger structure for the storage of these items. The size they are requesting could be filled easily. J. Clingman-Scott asked if the smaller side would be facing the road. N. Mead stated that it would.

A motion to close the public hearing was made by R. Hilt, supported by R. Schweifler and unanimously approved.

J. Clingman-Scott stated that she was concerned that the current screening may not be enough. She also felt that the color of the structure should blend into the background. C. Kufta stated that he had tried to come up with some screening that might work, but couldn't think of any. R. Hilt felt that the structure should be a muted earth tone color. This way it wouldn't be noticed as much. C. Kufta suggested adding a condition that the building that was shown to the commission members was the one that would be built.

The following findings of fact were incorporated by reference of the applicant's submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the property is zoned single family, the agency is a

service oriented non-profit organization dedicated to women and children in danger, homeless, and runaway youth. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the variance would allow their building to appear as aesthetically pleasing over the years, given the heavy use it would have to endure. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the steel siding would withstand commercial-level use more effectively than vinyl siding and yet be of comparable appearance. That the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the zoning of the property is single family and the zoning ordinance doesn't allow for this type of structure. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the organization is a non-profit organization. They receive large item donations and need storage space for them to avoid unsightly appearance from the street. The requested variance is the minimum action required to eliminate the difficulty because this is the least obtrusive solution to the issue.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a pole-style accessory structure with metal siding at 1221 W. Laketon Ave., be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) That the structure be screened from public view from Laketon Ave. by means of natural landscaping, if the existing landscaping does not provide sufficient screening. 4) The building design that was provided will be the building built, was made by R. Schweifler, supported by R. Hilt and unanimously approved.

Hearing: Case 2003-21: Variance request to allow a 6-foot fence in front of the front building line on a corner lot at 1190 W. Dale Ave., by Matthew J. Kotecki. D. Steenhagen presented the staff report. This case is the result of an enforcement action. The applicant erected a fence without a permit. The Zoning Inspector sent a letter in May explaining that the fence was too tall and blocked clear vision at the intersection of Davis St. and the alley. The applicant then applied for a permit for the fence, which was approved, conditioned upon the fence either being lowered or moved back. The applicant has since applied for this variance to allow the fence to remain. The applicant has constructed a 6-foot fence. Photos were provided to the commission members. The fence was originally placed right up to the sidewalk on Davis St., but has been moved back both because of clear vision issues at the corner of Davis St. and the alley and because property lines generally run about 18 inches inside the sidewalk. The Zoning Ordinance defines a 'front' yard as being any yard, which abuts a street. Therefore, corner lots are considered to have two 'front' yards since they have two street frontages. The ordinance does not permit 6-foot privacy fences in front yards. A privacy fence can only be up to 3 feet in front yards. The fence would be permitted to be 6-feet high if it ran in line with the home instead of jutting out in front of it. The applicant has stated that they need the fence to be 6 feet high because they have a large dog. Staff has received two phone calls regarding this case. Richard Smith, 1151 Ireland Ave., has no objections – the applicant has a big dog and wants to keep it in the yard. Greg Sima, 1159 Ireland Ave., says that as far as he is concerned the applicant can keep his fence. He's addressed all of the neighbors' concerns with safety issues by moving the fence back from the alley. The

property looks better with the fence than it did before. One neighbor came in and spoke to staff, saying that they would prefer a cyclone fence and did not like the appearance of the existing fence.

M. Kotecki explained the need for the fence. He is also landscaping the area and would be willing to stain the fence. J. Clingman-Scott asked for clarification on the placement that would be allowed according to the zoning ordinance. D. Steenhagen explained that the privacy style fence could be 3 ft. where it is or the 6 ft. fence would have to be even with the home and not in front of it. E. Fordham stated that he had driven in the neighborhood and named off the different addresses that have the same situation that have 6-ft. fences. D. Steenhagen stated that they were grandfathered in. The language had been changed a few years back. M. Kotecki offered the commission members a signed petition of people in his neighborhood that were in support of the placement of the fence. R. Hilt asked how wide the lot was. M. Kotecki stated that it was 90 ft. x 120 ft. J. Etterman stated that the fence has made a big improvement to the neighborhood. M. Kotecki provided the commission members with pictures of the fence along with pictures of his dog showing how tall he is compared to the fence. P. Karadeen asked the applicant if the reason for the fence was to help him not to keep up with the back yard. M. Kotecki stated that because of all the trees located in that area, the grass grows in patches. There may be times that he mows the front yard and leaves the back for another day, but that isn't the reason for the fence. His children play in the back yard. There is a sandbox located there. His dog stays in the back yard. With the fence, his dog doesn't bark as much since he doesn't see the people walking by and people aren't scared of the dog since they don't see him.

R. Schweifler left at 5:30 p.m.

A motion to close the public hearing was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

J. Clingman-Scott stated that fences are generally permitted in the backyard. If the request were denied, then this would keep the owner from using it. C. Kufta asked if fences were allowed on the property line in front of the home. D. Steenhagen stated that they are, but for a privacy style fence it would need to be 3 ft.

The following findings of fact were incorporated by reference of the applicant's submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the zoning rules refer to front yards. The applicant feels this is their side/back yard. The applicant also has a large dog. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because neighboring properties would have the right to have such a fence and allow their large dogs to roam free on the property while having the dog safely located inside the property. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because this would not negatively affect the neighbors. The fence has improved the appearance of their yard. This has also discouraged their dog from excessive barking. Gates have also been installed for emergency situations. The alleged

difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property or by any previous owner because corner lots are considered to have 2 “front” yards. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the height of the fence provides safety, security, and comfort for the dog, the applicant and their small children, and the passers by. The requested variance is the minimum action required to eliminate the difficulty because the fence allows their dog the freedom to roam their yard without the teasing of the neighborhood children. A 3-ft. fence simply wouldn’t contain him.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a 6-foot fence in front of the front building line at 1190 W. Dale Ave. be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by J. Clingman-Scott, supported by E. Fordham and was denied with C. Kufta, S. Schiller, and R. Hilt voting nay.

OTHER

Bylaws – D. Steenhagen provided the commission members with a copy of the proposed bylaws. The commission members will look them over and discuss this at their next meeting to discuss them.

There being no further business, the meeting was adjourned at 5:38 p.m.

hmg
8/12/03